seems evident, however, that these rules cannot be relied upon with certainty. In this connection, it has been held that where the contract, though legal on its face, is so made that its undisclosed but real purpose is to deal in cotton futures, parol evidence is admissible to establish the real intention of the parties. *Talbot & Son v. Martindale* (1919, Tex. Civ. App.) 211 S. W. 302. For an accurate analysis of option contracts, see Hohfeld, *Fundamental Legal Conceptions* (1913) 23 YALE LAW JOURNAL, 16, 44; see Corbin, *Option Contracts* (1914) 23 YALE LAW JOURNAL, 641.

CRIMINAL LAW—MURDER—INTOXICATION AS AN EXCUSE.—The accused, in the act of violating a young girl, placed his hand upon her mouth to quiet her thereby causing her death by suffocation. The lower court assumed that the accused had the intent to rape, but on the ground of intoxication reduced the verdict from murder to manslaughter. *Held,* that the verdict of murder should be restored, since the death was caused by an act of violence done in furtherance of a felony. *Director of Public Prosecutions v. Beard* (1920, H. L.) 36 Times L. R. 379.

An unlawful homicide, perpetrated in the commission of an offense amounting to a felony, is generally held to be murder. *State v. Cross* (1900) 72 Conn. 722, 46 Atl. 148; *Regina v. Serne* (1887, Cent. Cr. Ct.) 16 Cox C. C. 311. Formerly drunkenness was held to aggravate, rather than excuse or mitigate a crime. See Hale, *Pleas of the Crown* (1778) 32; see 4 Blackstone, *Commentaries* (21st ed. 1852) 26. A few isolated cases in the United States have held that drunkenness was not a fact to be considered in determining the degree of the crime. *United States v. McGlue* (1851, C. C. D. Mass.) 1 Curtis, 1; *Commonwealth v. Hawkins* (1855, Mass.) 3 Gray, 463; *State v. Brown* (1904) 181 Mo. 192, 79 S. W. 1111. Where a person with the intention of killing becomes intoxicated, though at the time of the killing he was too drunk to form any intent whatsoever, the intoxication is no excuse. *Cook v. State* (1903) 46 Fla. 20, 35 So. 665; *State v. Robinson* (1882) 20 W. Va. 713. But intoxication such that the person is incapable of forming an intent always reduces murder from the first to the second degree, unless the intention to kill existed before the intoxication. *People v. Rogers* (1858) 18 N. Y. 9. But the usual rule would seem to be that it does not reduce the offense from murder in the second degree to manslaughter. *State v. Johnson* (1874) 41 Conn. 584; *Atkins v. State* (1907) 119 Tenn. 458, 105 S. W. 353. In some cases where the rule is apparently contrary, the cases are based upon the statutory requirement of a specific intent for murder. *State v. Rumble* (1909) 81 Kan. 16, 105 Pac. 1; *Perryman v. State* (1916) 12 Okla. Cr. 500, 159 Pac. 937; see Cook, *Act, Intention, and Motive in the Criminal Law* (1917) 26 YALE LAW JOURNAL, 645. A number of jurisdictions require the existence of a specific intent to do at least serious bodily harm to constitute the crime of murder. As a logical result in those jurisdictions such a degree of intoxication reduces the crime to manslaughter. *State v. Corrivau* (1904) 93 Minn. 38, 100 N. W. 638; *Springfield v. State* (1892) 96 Ala. 81, 11 So. 250. England follows this doctrine. *Regina v. Doherty* (1887, Cent. Cr. Ct.) 16 Cox C. C. 306. The instant case appears to be entirely sound on its facts and in accord with the English concept of the crime of murder.

FRAUD—PROMISSORY STATEMENTS—INTENTION NOT TO PERFORM—A MISREPRESENTATION OF FACT.—The plaintiffs represented that they would use honest methods to increase the defendant's sales. The defendant gave six promissory notes in consideration of the plaintiffs' promise to organize and manage contests to produce this result. The plaintiffs did nothing in the work of organization and fraudulently cast votes to keep the few contestants close. The defendant demanded the return of the three notes remaining unpaid, and the plaintiffs sued to recover on them. *Held,* that the plaintiffs should not recover, because the

consideration had failed, although fraud could not be predicated upon representations, however false, of a promissory character. *Records v. Smith* (1920, Ind.) 126 N. E. 335.

The general rule appears to be that fraud cannot be predicated on representations of a promissory character, but only on representations of past or present fact. Anson, *Contract* (3d Am. ed. by Corbin, 1919) secs. 222 ff. The same test seems to be applied whether the misrepresentations claimed are set up as a defence to an action for breach of contract, as a ground for rescission in equity, or as a basis of the tort action for deceit. *Keithley v. Mutual Life Ins. Co.* (1916) 271 Ill. 584, 111 N. E. 503 (tort); see *James Music Co. v. Bridge* (1908) 134 Wis. 510, 513, 114 N. W. 1108, 1110 (defence to replevin); *Harris v. Trueblood* (1916) 124 Ark. 308, 186 S. W. 836 (tort). It is said that a promise alone is not, in a legal sense, a representation, and that failure to perform does not make it such. *Brown v. Pierce & Co.* (1918) 229 Mass. 44, 118 N. E. 266 (counts in tort and contract); see *Russ Co. v. Muscupiabe Land Co.* (1898) 120 Calif. 521, 529, 52 Pac. 995, 998 (defence to breach of contract). Some courts say that while a statement of occurrences to happen in the future when stated as a fact may amount to fraud, a promise or expression of intention to do something in the future will not. See *Miller v. Sutliff* (1909) 241 Ill. 521, 526, 89 N. E. 651, 652 (action to rescind); see 2 Pomeroy, *Equity Jurisprudence* (4th ed. 1918) sec. 877. Yet an action for deceit may be had on a promise made at a time when the promisor had put it out of his physical power to perform by contracting with a third party. *Traber v. Hicks* (1895) 131 Mo. 180, 32 S. W. 1145; see COMMENT (1917) 27 YALE LAW JOURNAL, 691; see (1918) 28 *ibid.*, 415. A distinction should be made between a promise which the promisor intends to perform, and one which the promisor at the time of promising intends to break. In the second case there is a fraudulent misrepresentation of present fact. *McLean v. South Western Casualty Ins. Co.* (1916, Okla.) 159 Pac. 660 (rescission); *Cermy v. Paxton & Co.* (1907) 78 Neb. 134, 110 N. W. 882 (tort); see 10 L. R. A. (N. S.) 640, note. *Contra, Farris v. Strong* (1897) 24 Colo. 107, 48 Pac. 963 (rescission); *Ingersoll v. Brown & Co.* (1917) 205 Ill. App. 537 (tort). In the final analysis an intention, although difficult of proof, is an existing fact. *Edginton v. Fitzmaurice* (1884) 29 Ch. Div. 459 (tort); *Adams v. Gillig* (1910) 199 N. Y. 314, 92 N. E. 670 (tort). With the qualification that if an intent not to perform at the time of promising can be proved, it should make out a case of fraud in contract, tort, or equity, the *dictum* of the principal case is sound. For the effect of innocent mispresentation, see COMMENT (1918) 28 YALE LAW JOURNAL, 178.

MARRIAGE AND DIVORCE—ANNULMENT OF MARRIAGE—PARTIES IN PARI DELICTO.—The petitioner sought a decree annulling her marriage to the defendant. At the time of such marriage, as she and the defendant knew, she was the lawful wife of another. *Held,* that the decree of annulment should be granted. *Davis v. Green* (1919, N. J. Eq.) 108 Alt. 772.

There has been a growing doubt as to the wisdom of applying the doctrine of *in pari delicto* universally. In equity exceptions have been made where the courts have felt that public interest or the justice of the case should operate to prevent its enforcement. See (1918) 28 YALE LAW JOURNAL, 699. Thus a deed executed for the purpose of terminating a criminal prosecution has been set aside. *Burton v. MacMillan* (1907) 52 Fla. 469, 42 So. 849; *Tucker v. Cox* (1915) 101 S. C. 473, 86 S. E. 28; *cf. Schroeder v. Turpin* (1913) 253 Mo. 258, 161 S. W. 716. Even at law, in certain cases of illegal contracts, there has been some tendency to allow the plaintiff judgment where his actions do not disclose a high degree of moral turpitude. See (1918) 27 YALE LAW JOURNAL, 1090; see Thurston, *Cases in Quasi Contract* (1916) ch. 3, sec. 2. The general rule has been applied to parties *in pari delicto* seeking the annulment of a marriage. *Rooney v. Rooney*